

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOHNATHAN FRANKLIN,
a/k/a Jonathan Franklin,

Petitioner,

v.

Case No. 06-C-752

WILLIAM POLLARD,

Respondent.

ORDER DENYING MOTION TO VACATE

On July 12, 2006, Johnathan L. Franklin filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254, alleging that his state court conviction and sentence were imposed in violation of the constitution. The petition was dismissed as untimely pursuant to 28 U.S.C. § 2244(d)(1). Franklin filed a “Motion for Reconsideration” of that decision; his motion was denied on September 11, 2006. Shortly thereafter, on September 25, 2006, I denied Franklin a certificate of appealability. Franklin appealed and the Seventh Circuit also denied his certificate of appealability on January 5, 2007. (ECF No. 18.) Five years later, Franklin now moves to “vacate” the judgment in his case under Rule 60(b). (ECF Nos. 19, 20.)

Franklin’s motion will be denied. Rule 60(b) provides relief from judgments based on special circumstances that could not have been challenged through direct appeal. *See* Fed. R. Civ. P. 60(b); *Bell v. Eastman Kodak Co.*, 214 F.3d 798, 800–801 (7th Cir. 2000). According to the rule, Rule 60(b) motions must “be made within a reasonable time.” Over five years have passed

since judgment was entered. Franklin suggests he tried mailing his motion earlier but that the “post office has returned it twice.” (ECF No. 20 at 1.) I do not find this argument compelling. Franklin had no trouble filing other motions, such as a motion to enlarge the appeal record (ECF No. 13) and his appeal itself. (ECF No. 16.) Furthermore, submitting the motion twice within an almost six year time frame is hardly diligent. The motion was therefore not made within a reasonable time. Franklin’s motions (ECF Nos. 19, 20) are accordingly DENIED.

SO ORDERED this 20th day of June, 2012.

s/ William C. Griesbach
William C. Griesbach
United States District Judge